

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 36 of 1981

in

SPECIAL CIVIL APPLICATION No 685 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PRAKASHSING ATMASINGH

Appearance:

Mr.K.B.Pujara, Advocate for the Appellant.

MR B.Y.Mankad, AGP instructed by M.s.M.G.Doshit & Co
for the respondents.

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE C.K.BUCH

Date of decision: 10/11/98

ORAL JUDGEMENT

The State being aggrieved by the decision of the
learned Single Judge on 11.12.1980 has preferred this

appeal.

2. The respondent who put in about 28 years of service at the time of filing the petition and was Vice President of the Ahmedabad Head Constable Association was dismissed by an order dated 17.3.80 from the Police Force by the State Authority. It transpires that Head Constable Association was formed and because of the activities in the Union, the authority dismissing the respondent held that respondent was unbecoming of a member of the Police Force and without holding any inquiry as it was not practicable to held an enquiry as envisaged in Article 311 of the Constitution of India. The respondent and others similarly situated preferred applications which were disposed of by a common judgement.

3. Three contentions were raised by the respondent and others before the learned Single Judge:-

"(1) The impugned orders are malafide and in colourable exercise of the power and, therefore, void and ineffective in as much as they smack ex facie of victimisation of the petitioners for their recognised Union activities.

(2) The impugned orders are bad in law and void in as much as they are in clear violation of the mandatory provisions of section 26 of the Bombay Police Act, 1951 in as much as no opportunity has been given to the respective petitioner before the proposed penalty is inflicted and without recording any reasons in that behalf.

(3) The impugned orders are bad in law and void in as much as they are made on extraneous considerations since the conditions precedent for exercise of the power under Clause (b) of the Second proviso to Article 311(2) did not exist in fact."

3. Mr.Mankad, Learned Advocate appearing for the appellant was not in a position to point out as to how the decision in question requires any interference. It is admitted that enquiry was not held, opportunity was not given to the person concerned and even without producing the reasons before the court it was argued that the order is in accordance with law. Learned Single Judge has considered while deciding the matter the decision of a Full Bench of Calcutta High Court in Mrinal Kanti Das Burman and Ors Vs. State of West Bengal and

ors 1977 LAB.I.C.628, decision of Bombay High Court in the case of Mohomed Tayum vs. Union of India and others 1977 LAB I.C.1590, and decision of Delhi High Court in case of R.K.Misra Vs. The General Manager, Northern Railway, New Delhi and another 1977 LAB.I.C.643.

4. The Apex Court in the case of Chandraprakash Administration vs. Ajay Manchanda reported in J.T. 1996(4) SC 113 had an occasion to consider the case of termination of service without holding a disciplinary inquiry. The Apex Court in the aforesaid case considered the reported decision in case of Union of India Vs. Tulsiram Patel (1985 (3) SCC 398) a case where large number of railway employees participated in an illegal All India strike and the government had responded by ordering their dismissal en masse. The Court observed that the action was held to be justified in the circumstances but at the same time it was also held that recording reasons for forming the requisite satisfaction is mandatory though it is not necessary that those reasons must find place in the order of punishment. However authority must produce the same when called upon to do the same by the court. In the instant case, the appellant was not in a position to show that reasons were recorded for forming requisite satisfaction. Mr.Mankad could not point out that the impugned judgement requires any interference. Under the circumstances the appeal stands dismissed with no order as to costs.

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